

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 ADAM BRENT WALLACE,

11 Defendant.

Case No. 2:11-cr-0094-KJD-CWH

ORDER

12  
13 Presently before the Court are Defendant's Motions and Petitions  
14 (#159/170/175/176/177/181). Defendant's initial appeal following his guilty plea and sentencing  
15 was voluntarily withdrawn, because Defendant had knowingly waived his right to appeal his  
16 conviction and low-end guideline sentence. Defendant has previously filed two (2) motions  
17 arising under 28 U.S.C. § 2255. Both motions were denied: one on the merits (#66) and another  
18 for failure to receive permission of the Ninth Circuit to file a second or successive petition  
19 (#150) as required by 28 U.S.C. § 2255(h). Appeals of both motions were dismissed after  
20 Defendant failed to obtain certificates of appealability.

21 Defendant has also filed numerous motions, post judgment, to dismiss his indictment, for  
22 reconsideration, and for other forms of relief which essentially attack his conviction. Currently,  
23 Defendant has filed a bevy of motions seeking relief under Civil Rule of Procedure 60, writs of  
24 error *coram nobis*, and to reopen his original § 2255. Defendant cannot make these motions  
25 under 28 U.S.C. § 2255 because he is no longer in federal custody on his sentence and because  
26 he has not obtained permission to file a second or successive petition in accordance with 28  
27 U.S.C. § 2255(h).  
28

1 Like his previous attempts, his most recent attempts at setting aside his conviction for  
2 receipt of child pornography must be dismissed. First, Defendant cannot meet the high bar for  
3 obtaining a writ of *coram nobis*. “[A] petitioner must show the following to qualify for *coram*  
4 *nobis* relief: (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the  
5 conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the  
6 case or controversy requirement of Article III; and (4) the error is of the most fundamental  
7 character.” Hirabayashi v. United States, 828 F.2d 591, 604 (9th Cir. 1987). Regardless of the  
8 merits of his motion, which are not good, Defendant cannot meet the second prong of  
9 Hirabayashi because he failed, without cause, to raise his argument based on U.S. v. Davenport,  
10 519 F.3d 940 (9th Cir. 2008) earlier. Therefore, Defendant’s petition for a writ of error *coram*  
11 *nobis* is denied.

12 Further, Defendant’s motion to reopen his § 2255 motion must be denied. With respect to  
13 Rule 60(b), in Gonzalez v. Crosby, 545 U.S. 524 (2005), the Supreme Court held that a prisoner  
14 may not rely on Rule 60(b) to raise a new claim in federal habeas proceedings that would  
15 otherwise be barred as second or successive under § 2254. Id. at 531. Because § 2254 is nearly  
16 identical to § 2255 in substance, the Ninth Circuit and several others have applied Gonzalez to  
17 Rule 60(b) motions to reopen § 2255 proceedings. See United States v. Buenrostro, 638 F.3d  
18 720, 722 (9th Cir. 2011) (collecting cases). Wallace has not sought the authorization necessary to  
19 file a successive 28 U.S.C. § 2255 petition. See 28 U.S.C. §§ 2244, 2255(h). Defendant’s  
20 remaining arguments lack the specificity to be addressed. Therefore, Defendant’s claims under  
21 Rule 60(b) and (d) are dismissed.

22 Finally, Defendant is unable to demonstrate that reasonable jurists would find the court’s  
23 assessment of the constitutional claims debatable or wrong. See Slack v. McDaniel, 529 U.S.  
24 473, 483-84 (2000). Therefore, the Court cannot grant Defendant a certificate of appealability.

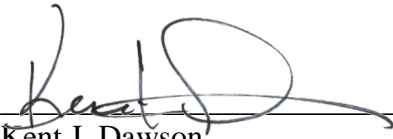
25 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motions and Petitions  
26 (#159/170/175/176/177/181) are **DENIED**;

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS FURTHER ORDERED that Defendant is **DENIED a Certificate of Appealability.**  
Dated this 30th day of October, 2019.

  
Kent J. Dawson  
United States District Judge